# THE LAW'S DELAY.

BEFORE and since Hamlet's soliloquy was written, the law's delay has been a by-word and reproach, a source of anxiety and unhappiness, the cause of mental distress and financial disaster, the object of poetic contempt, an actual impediment to the advance of civilization, and an obstruction to the development of the science of law. Rules of law and statutes should accord with common sense, agree with logical reasoning, avoid absurd consequents, and result, when put in practice, in rapid but not hasty or ill-considered settlement of forensic disputes.

The principal source of the law's delay is the law's defects, originating immediately in the venality, neglect, or incapacity of legislators, which springs from their election by the ignorance, corruption, or partisanship of a class of suffragists who too often hold the balance of power in elections. How to reach the tap-root of the evil is the deep and vital question to this country. As the suffrage is the original, ultimate, irresistible power on which the general and State governments rest and their perpetuity depends, nothing else can be so important as the purity and intelligence of the ballot; yet the ballot is in the hands of some who are wholly ignorant of its object and its power; of others who sell it under a thin veil in open market to the highest bidder; and of a much larger number who use it to gratify passionate and unreasoning partisanship, the meaning of whose banner-cry is, "For the offices we are patriots."

There are remedies for this public malady, but to adopt and administer them requires patience, courage, and wisdom. The voter has the jewel of modern, and therefore American, civil liberty in his hands, and he too often casts it in the dust. He is invested with a unit of the only arbitrary power in the government, but regards it with thoughtless indifference, or exercises it with reckless passion. The only certain and substantial relief

from this condition lies in the education of the people, and the development of the free and enlightening spirit of commerce, which is the best of educators, by improving and connecting, when possible, our great natural water-ways, and opening to us the markets and patronage of the world. The dense illiteracy in many parts of the United States, shown by the last census, is an argument in behalf of public education that no statesman who loves humanity can with sound reason oppose. The man who is too indolent or too perverse to avail himself of the opportunities to learn to read and write that are offered in this country, is undeserving of the right to exercise the important function of a voter. Yet public men, either deficient in statesmanship, or dominated by demagogism, will not openly and bravely advocate an educational qualification, for fear of being charged with possessing tendencies to property qualification, although it would indicate no such thing, but clearly the reverse. For if the people become educated, property aristocracy, whose successes have been universally the result of superior intelligence, could never rule them, and they would not consent to other qualifications of suffrage than those based upon equality and composed of elements common to all. If a law were enacted by each State and by Congress that three years from its passage no person who could not read should vote, and four years after its adoption he should not be qualified to vote if he could not write, there would, within that probationary time, be more real advance in common education than this country has seen in half a century. The American sovereign would discontinue misspending his precious hours at least long enough to learn to read and write. The demagogues would rant a little, and some lazy fellows would yawn against the tyrants who, while breaking the shackles of their ignorance, deprive them of the personal freedom of illiteracy; but the bright dawn of intelligence, under such laws, would soon show the folly and weakness of the opposition. With the people educated in letters, and in the laws of trade and commerce, self-interest, observation, and intelligence would demand better statesmanship and more useful and practical legislation. As a consequence, the people would select wiser law-makers, and the primal causes of the law's delay would gradually disappear.

Passing from the blessings we have not to the curses we endure, it is to be noted that the legislators of the present

day are guilty of two great sins, among many less, in law-making. First, they pass laws in a hurry, by cabal and cavil, with a little meritorious debate, in order to rush home to their constituents, in search of the politician's balm in Gilead, the approval of the people, whose business they have transacted in the briefest time, on the least information, and with the smallest alleged expense; and in most instances it will cost double the labor, time, and expense to undo the mischief. Second, through selfishness, the generalization of the law is overlooked or disregarded, and special or local legislation is often made the exclusive subject of their attention. Much of this condition of things results from the interference and misdemeanors of the lobby, which in the name of the right of petition obstructs the enactment of equal and uniform laws, and retards the great measures of legislative reform.

Lobbying should be made the object of incessant war and corrective enactment, until it is driven from legislative halls. Its exit would proclaim the inflow of fresh thought, calm deliberation, and renewed legislative vigor, and the end of rifely reported corruption that shames the country, alarms the people, and shakes public confidence. Strike the gyves of the lobby from the limbs of the legislatures, purify their precincts, and another cause of the law's delay would become inconspicuous and finally cease to annoy the country. This view needs no further specification, and from the defective qualifications of voters to select law-makers, and the noxious influence of the lobby, we may descend to a brood of minor evils whose influence is in the same direction.

It is conceded by the well-informed that we have progressed painfully and but little in the true development of civil government; yet, as to theory, America is in advance of the world. The trouble is not in our form of government, which is by far the strongest and best adapted to the ends of civil order and civil liberty; and the deficiency in administration, aside from bad law-givers, consists mainly in the lack of business order in public affairs. The existence of passion, favoritism, nepotism, and subjection to the behests of party, instead of love of country, thoughtfulness, and systematic business principles in the administration of government, with too much esotericism in its conduct, gives posts of honor to servants that impede, and retains officials that resist reform and accuracy in the civil

service of the country. They forget they are chosen to be about their country's business, in which every citizen has an interest. Thus the want of business capacity and fidelity to the people's trust furnishes many causes for the law's delay, and some for its death. Red tape, or useless technical forms, in judiciary and executive, which have long since done their appointed work and should be remembered only as marks on the way of the law's progress, ought to be dispensed with, and the simple methods of truth and justice adopted.

These general notions, which are more than merely "sugared suppositions," relate particularly to the legislative and executive branches of government, and it is hoped they will dispel in part the popular idea that the law's delay is entirely attributable to the courts. While it is not true that the cause of delay in the administration of justice is to be found, either at all times or more potent, in the courts, yet tardiness in judges and faults in judicial administration do exist. An indolent judge, or one with such shallow impressions of the responsibility of his station as cause him to pass lightly through the performance of his duties, is too often found. The relief furnished by the States lies in the election, at the next regular poll, of somebody else in his place; that by the general government in removal, if his derelictions rise to the dignity of misbehavior, high crime, or misdemeanor. The judiciary is generally composed of the best material the bar affords, but in many instances this is not the case. The cause of the misfortune is in the looseness of the elective system. To the election of judges by the people there is, to my mind, no valid objection; for if vote-selling can be punished and repressed, and suffrage elevated, respected, and understood, the elective system, where the voice of the largest constituency can be invoked, will secure as good judges as any other that can be devised in a republic. Experience teaches that when the whole body of people in a State participate in the election of judges or other officers, better material is presented for their choice than where the election is confined to smaller geographical limits or fewer voters. The extent of country and diversity of interests, character, and attainments of voters repress the pretentious and undeserving, and the result is, that larger constituencies are generally blessed with a higher intellectual and moral grade of officials. All appellate and circuit judges should be elected by the voters of the State at large; and to insure freedom from

improper influences, arising from the elective system, circuit judges ought to be assigned by the court of highest jurisdiction to districts in which they do not reside. These regulations, it is believed, would sufficiently remove the judges from the bane of political exactions, yet retain the feature of popular elections through which the people control their government. Thus incompetency, so fruitful of delays when it roots itself in the bench, would be diminished, if not extirpated.

Next to the importance of pure and enlightened judges are honest and intelligent jurors. The determination of the facts in criminal and civil trials can never be confided to a better tribunal than the jury, for whose perpetuation the soundest arguments have again and again been repeated. But, like many of the rules and institutions of the common law, the mode of selecting jurors and finding verdicts can, in the light of civilization, be improved. In the first place, no person should be qualified to serve on juries unless moral, sober, intelligent, able to read and write, and possessed of some knowledge of arithmetic. Yet the writer has seen ensconced among "the apostolic twelve," in ambushed ignorance, men who did not know a letter of the alphabet. Juries perform duties that require intelligence and moral courage. The difficult question is, how to select jurors. There are serious objections to the selection by commissioners or sheriffs, for they usually pick from their own church or political party. The best practicable method of securing unbiased and intelligent jurors, is to require the judge, at each term, with the aid of four sworn commissioners taken equally from the political parties, to select the grand and petit jurors himself for the succeeding session, taking an equal number as may be from the different subdivisions of the county, and from the various political parties, without regard to religious tenets. The list should be sealed and delivered to the clerk of the court, and the names of the jurors kept a sworn secret by judge, commissioners, and clerk, until only time is left for breaking the seal and summoning them for the term they are to serve. Any attempt to corrupt or prejudice jurors should be so punished as to render the offender odious; and a corrupt verdict should disqualify the juror engaged in it from serving on juries, voting, or holding office. Let the dangerous method of summoning bystanders to fill vacancies in the panel be abandoned,—the returned list being made large enough to supply the demand,—because it

encourages the professional juror, and furnishes an unmastered opportunity for packing juries. If such precautionary measures as these were adopted, fewer hung juries, excessive verdicts, and verdicts contrary to law and evidence would be found. Badly informed, partisan, wrong-headed, and careless jurors have, in my experience, consumed more time by their blunders and stubbornness than any other part of the machinery of justice. The requirement of a unanimous verdict is prolific of delay. Often one ignorant, froward, perverse, or corrupt juror will hang a jury without reason, unmindful of the contempt and ridicule that his position deserves. This should not occur in the trial of civil actions; for new trials, accumulating costs, constant destruction or deterioration of the property in controversy, consumption of time, and exasperation of litigants, outweigh vastly the importance of a unanimous verdict, which operates, in most cases, as a preclusion of the better judgments of ten-twelfths of the jury, for the whims, speculation, or something worse of one or two negatives. On the first trial, two jurors ought not to be allowed to hang the jury, and after that a majority verdict should be accepted. This rule would not put justice to hazard, for the court stands, like the reserve of an army, to protect it from disaster; ready to arrest the judgment or set aside the verdict when in conflict with law, evidence, or substantial justice. Its adoption would save one-fourth of the time of *nisi prius* courts, which is now consumed by delays produced by hung juries. To reach the reforms suggested, it is not necessary, nor would they tend, to abolish election of judges by the people or selection of juries from the people. Both are essential to their rights, and must be preserved by the States as the offspring of liberty secured to us by the genius of democratic government.

Here the growing evil of interference, by the mob spirit, with the administration of justice, may be mentioned. The presence of its hideous form, shadowing courts and juries with awe, sends a shudder to the heart of every patriot, and demands the profound consideration of all men who respect law or love peace. It is an undeniable fact that mobs form and notify the courts, in a manner never proven, of their existence; and irregular or illegal convictions often follow, which have to be annulled on review, or the law is thrown into confusion. They sometimes appear on the very floor of the court-room,

under pretense of mere on-lookers, but ready at each development of evidence tending to justify their passion to applaud, and if the spirit of mobocracy has been lashed into fury by communistic speeches and publications, to burst forth with deafening yells ungoverned or uncontrollable by the courts and officers. Such criminal obstruction of public justice and desecration of the uses of courts pass by with feeble or no effort to punish the perpetrators, and there is no law sufficient to bring them to the bar to answer for this gravest of crimes. And the same mob that thus prevent a fair and legal trial distribute themselves back into the community to denounce courts, threaten jurors, and breed discontent over the law's delay when the result of their wild and ignorant work is undone by calm, intelligent, and impartial courts. No one can estimate the amount of judicial work that mobs and the mob spirit compel the courts to do over and over again. Here is a detestable evil for political philosophers to examine and expose, for the law-abiding citizen to encounter, and the bravery of the country to destroy, before it enshrouds us in the darkness of communism.

Among many other causes of the law's delay is the great bulk and conflict of laws. The vast number of volumes of reports, in which law and *dicta* are found in an almost indistinguishable mass, render it a physical impossibility for the judges to examine all of them on every question, and also decide the cases assigned to them or brought in their courts, without dispensing with the maximized right of every citizen under the constitution to a speedy and public trial. Hence the codification of American law is a growing and urgent necessity that cannot be withstood much longer.

The law's delay begins and ends with the people. Its intermediate forces and remedies of control have been named in part, but of course not elaborated. They are looped in every nook and cranny of the political edifice in which we live, and within whose walls governments within a government are at work solving the question whether man is capable of governing himself. The labor of origination, making possible a sound and just government, was done when its ichnography was drawn and its foundations laid. Our duty and service point us to adjustment, correction, method, and perfection in the details of a faultless plan of government, whose founders "builded better than they knew."

THOMAS F. HARGIS.